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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.287 OF 1997

M/s.Shree Nityanand Steel Rolling Mills Pvt. Ltd. ... Petitioner

V/s.

Shakuntala Chandu Wageshwar & Ors. ... Respondents

Mr.B.V. Bukhari for Petitioner.

Mr.V.K. Pradhan for Respondent No.1.

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 21, 2006**

ORAL JUDGMENT:

. The Petitioner has impugned the judgment of the Labour Court in Application (IDA) No.124 of 1988 filed under section 33-C(2) of the Industrial Disputes Act. The Labour Court has allowed the claim of the respondent workman for wages from 1975 to 1985.

2. The respondent-workman was employed as a sweeper with the Petitioner. According to the workman, her services were illegally terminated. The Petitioner had not paid minimum wages to her during her entire service. She thus, claimed Rs.34,500/- as arrears of wages besides bonus, privilege leave, etc.

3. The Petitioner filed its reply to the application contending that the workman was employed as a part time employee for cleaning toilets in the factory premises. This involved a maximum of two hours of work. The workman's services were not terminated according to the Petitioner, but she remained absent from the work when the factory was closed down. The Petitioner claimed that her services were in fact required even after the closure of the factory as about 15 people still continued to be on the factory premises.

4. The evidence of the workman and one officer of the Petitioner was led before the Labour Court. The workman has stated that she worked for the whole day with the Petitioner and not for about 1.1/2 hours. She has denied that she was a part time employee. She claims that she was paid wages which were lower than the minimum wages paid to an unskilled worker in the factory. Initially she was paid Rs.20/- p.m. which amount was gradually increased till she was paid Rs.150/- per month by the petitioner. The Petitioner's witness was employed only in 1989 by the Petitioner. He has no personal knowledge about the correctness of the workman's claim although he is an officer of the petitioner Company.

5. The main contention raised on behalf of the Petitioner is that the Labour Court has transgressed its jurisdiction circumscribed by the provisions of Section 33C(2) of the Act. According to the learned Advocate appearing for the petitioner, the Labour Court acting under section 33C(2) of the Act is only an executing Court and therefore, cannot decide the status of an employee. The learned Advocate submits that the Petitioner had proved that the workman was a part time employee and therefore, she was not entitled to claim wages as a full time employee. The learned advocate has also submitted that the Labour Court has erred in granting wages equal to those which are payable to a Helper in the engineering industry. He contends that when the minimum wages have not been specified for a Sweeper in an engineering industry from 1975 onwards the Labour Court could not have decided to grant the wages payable to a helper.

6. The learned Advocate appearing for the workman has pointed out that by a notification dated 18.9.1979, the minimum wages were fixed for full time sweepers or scavengers employed in any employment not falling under any of the scheduled employments under the Minimum Wages Act. Where the industry falls within the scheduled

employment, the minimum wages payable to a Sweeper would be those payable to the lowest paid worker in that industry. He submits that there is no error of law or error apparent on the face of the record in the order of the Labour Court. According to the learned Advocate, the Labour Court has not exceeded its jurisdiction by deciding whether the workman was a part time employee or a full time employee and what should be the wages payable to the workman who claimed minimum wages.

7. The submission of the learned Counsel for the Petitioner that the Labour Court has transgressed its jurisdiction while deciding the application cannot be accepted. The Labour Court is empowered under section 33C(2) of the Industrial Disputes Act to decide the incidental questions are raised when considering the application. The Labour Court is clothed with such power and this has been reiterated time and again by several judgments of this Court as well as the Supreme Court. In the case of **Mahalaxmi Cooperative Housing Society Ltd. v/s. Dilip Singh Parocha & Ors., Letters Patent Appeal No.357 of 2002**, the Division Bench of this Court has taken a conspectus of the earlier judgments of the Supreme Court and of this Court. The Division Bench has observed that while dealing with an application under section 33C(2) of the Act the Labour Court has to

bear in mind the legislative intent in enacting the provision and the attempt to oust the jurisdiction of the Labour Court by raising a frivolous plea cannot be allowed to succeed. The Labour Court in such cases must determine by an incidental enquiry whether the workman making a claim for wages or any benefit is entitled to the same. The nature of such an incidental enquiry would depend on the facts of each case.

8. Therefore, the Labour Court can always decided whether an employee who has preferred an application is part time employee or a full time employee. The jurisdiction of the Labour Court cannot be ousted merely by stating that the workman concerned was a part time employee. This is an incidental question which would have to be decided by the Labour Court prior to deciding whether the workman is entitled to the amount claimed. In the present case, the Labour Court has decided on the evidence placed before him led by the Petitioner in that behalf. There is no perversity in the finding of the Labour Court which is based on the evidence on record. It would, therefore, be inappropriate to interfere with this finding of the Labour Court that the workman was a full time employee of the Petitioner.

9. Therefore, the question to be considered now

would be whether the respondent is entitled to a sum of Rs.34,500/- or a lesser amount. The workman claimed wages on the basis that she had attended work regularly for the 10 years prior to the date when she made the claim. The basic minimum wages payable was Rs.8.50 per day while the special allowance for the period from 1975 to 1985 was Rs.6 per day. The workman has based her claim on the basis that the Petitioner is an engineering industry and therefore, entitled to the lowest wages payable for that industry. The Labour Court has granted the claim. The Labour Court can always decide by an incidental enquiry whether a claim based on minimum wages is maintainable. As rightly pointed out by the learned advocate for the workman, a workman must be paid the bare minimum wage. If the minimum wage for a particular category of workers is not specified under the Minimum Wages Act, the workman must be paid the wages which are payable to the lowest paid employee i.e. an unskilled worker or helper.

10. The submission of the learned advocate for the petitioner that the minimum wages for sweepers have been specified after 1979, in view of the notification dated 18.9.1979 published in MGG Part-I L dated 22.11.1979, page 5914, and therefore only this amount is payable, cannot be accepted. This notification fixes the minimum

rates of wages payable to the employees who are working in an employment not falling under any of the entries in the schedule to the Minimum Wages Act, 1948. In the present case, the employment falls within the engineering industry which is a scheduled employment under the Minimum Wages Act. Therefore, the workman is entitled to a claim made by her based on the minimum wages payable to the lowest paid employee in the engineering industry. The aforesaid notification would not be applicable to her or govern the wages payable to her.

11. The order of the Labour Court is, therefore, upheld. Petition dismissed. Rule discharged. No order as to costs.

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